Walter N. Yoder & Sons, Inc. *and* Sheet Metal Workers International Association, Local Union 100. Case 5-CA-14306

15 May 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 29 November 1982 Administrative Law Judge Sidney J. Barban issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to give the Union 14 items of information requested in the Union's 25 March 1982 letter concerning the Respondent's relationship and dealing with Potomac so that the Union could determine whether the Respondent might be conducting a "double-breasted" operation.[2] As the judge noted, however, the Respondent provided the information requested in item 5 and in the first part of item 6 in a letter dated April 1982 the Respondent sent to the Union.[3] While the judge also noted that the Respondent "may have later, orally, answered another [item 10]," the evidence establishes that the Respondent fully answered item 10 at a 19 April 1982 meeting between the Respondent and the Union.[4] We shall accordingly issue new conclusions of law, an amended remedy, and a new Order and notice to employees reflecting that the Respondent did provide the information the Union requested in items 5 and 10 and the first part of item 6 in its 25 March 1982 letter, and is required to provide only the remaining items of information the Union requested in that letter.[5]

CONCLUSIONS OF LAW

By refusing to give the Union the information requested by items 1 through 4, 7 through 9, 11 through 14, and the second part of item 6 of the Union's letter to the Respondent dated 25 March 1982, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

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[1] In sec. I,b, par. 5 of his decision, the judge inadvertently stated that, on 19 April 1982, union business agent Drake met with Walter N. Yoder, the Respondent's president, and with the shop steward for Local 102 at the Respondent's premises. The record indicates that on that date Drake met with John W. Yoder, the Respondent's secretary/treasurer, and with Artie Dolly, the shop steward for Local 100. We hereby correct these errors.

The judge, in finding that the Respondent "had information justifying a good faith conclusion that the Respondent might be conducting a double-breasted operation," noted that the Union had received information from an agent in Cumberland, Maryland, that the Respondent was operating Potomac Metal and Supply, Inc. (Potomac), that Potomac was the same company as the Respondent, and that employees of the Respondent were operating equipment at Potomac's facilities. We note that similar information was provided to the Union by Brad Whetstone and Emmit Heiple, the Union's former business managers; by John Goldsworthy, the Union's former president; by Artie Dolly, the Union's shop steward at the Respondent; and by Billy Hunter, the Respondent's superintendent and a member of the Union. The Union thus formed its belief that the Respondent might be conducting a double-breasted operation after receiving all this information and securing reports from the Maryland State Department of Assessments and Taxation showing marked similarities in both companies' officers, directors, and business purposes.

[2] A "double-breasted" operation is one in which a contractor operates two companies, one unionized and the other nonunionized. Depending on how the companies are structured and operated, each may be a separate corporation or else both may be so interrelated that they constitute a single employer or one may be the alter ego of the other. A collective-bargaining contract signed by one of the companies would not bind the other if each were a separate corporation, but would bind the other if both constituted a single employer and the employees of both companies constitute a single appropriate bargaining unit or the nonsignatory company is an alter ego of the signatory company. *Associated General Contractors of California*, 242 NLRB 891, 892 fn. 5 (1979), enfd. as modified 633 F.2d 766 (9th Cir. 1980), cert. denied 452 U.S. 915 (1981); *Burgess Construction*, 227 NLRB 765, 770-771, 773-774 (1977), enfd. 596 F.2d 378 (9th Cir. 1979), cert. denied, 444 U.S. 940 (1979); *George C. Shearer Exhibitors Delivery Service*, 262 NLRB 622, 623-624 (1982), enfd. mem. 114 LRRM 2976 (3d Cir. 1983).

[3] In fact, the complaint alleged, and the answer admits that the Respondent answered item 5 and the first part of item 6 in its 5 April 1982 letter.

[4] On 19 April 1982 John W. Yoder spent several hours explaining to Richard Drake how the type of business engaged in by the Respondent was different from that of Potomac. In essence, Yoder stated that the sheet metal work performed by the Respondent, a multiple craft construction firm, consisted of heating, ventilating, and air-conditioning work, while Potomac, a manufacturing firm, fabricated water screens, waste treatment equipment, and related items. Yoder further asserted that Potomac used a gauge of metal in its operations that was outside of the Union's jurisdiction.

[5] In affirming the judge's decision, Chairman Dotson and Member Dennis do not rely on any implication in *Associated General Contractors of California*, supra, 242 NLRB at 893; and *Leonard B. Hebert, Jr., & Co.*, 259 NLRB 881, 886 (1981), enfd. 696 F.2d 1120 (5th Cir. 1983), cert. denied 114 LRRM 2567, 104 S.Ct. 76 (1983), that the information the Union sought in this case would be presumptively relevant because it enables the Union to evaluate whether Potomac's operations are so interrelated with the Respondent's operations that Potomac's employees should be included in the same bargaining unit. Instead, they find that a union must demonstrate reasonable or probable relevance whenever the requested information ostensibly relates to employees outside the represented bargaining unit even though the information may show ultimately that the employees are part of the bargaining unit because of the existence of a single employer or an alter ego relationship.

Member Zimmerman does not find that *Associated General Contractors* and *Leonard B. Hebert, Jr.*, imply that the information the Union sought here is presumptively relevant without the Union first having to demonstrate its relevance. To the contrary, both cases make clear that a union must establish a good-faith belief that employees may have been excluded improperly from the bargaining unit in order to demonstrate the "reasonable or probable relevance" of the information requested. See *Leonard B. Hebert, Jr.* at 884-886.

AMENDED REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, and to furnish the Union in writing the information requested by items 1 through 4, 7 through 9, 11 through 14, and the second part of item 6 of the Union's letter to the Respondent dated 25 March 1982.

ORDER

The National Labor Relations Board orders that the Respondent, Walter N. Yoder & Sons, Inc., Cumberland, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Sheet Metal Workers International Association, Local Union 100 as the exclusive bargaining representative of the employees in the following appropriate unit, by refusing to furnish the Union the information requested by items 1 through 4, 7 through 9, 11 through 14, and the second part of item 6 of the Union's letter to the Respondent dated 25 March 1982:

> All employees of Walter N. Yoder & Sons, Inc. engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, furnish to the Union in writing the information requested by items 1 through 4, 7 through 9, 11 through 14, and the second part of item 6 of the Union's letter to the Respondent dated 25 March 1982.

(b) Post at its facility in Cumberland, Maryland, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Sheet Metal Workers International Association, Local Union 100 as the exclusive bargaining representative of our employees in the following appropriate unit, by refusing to furnish the Union those items of information requested in its 25 March 1982 letter not previously furnished by us:

> All employees of Walter N. Yoder & Sons, Inc. engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e)

all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union the information requested in its 25 March 1982 letter, not previously furnished by us, that is relevant and necessary to its role as the exclusive bargaining representative of our employees in the bargaining unit.

WALTER N. YODER & SONS, INC.

DECISION

STATEMENT OF THE CASE

SIDNEY J. BARBAN, Administrative Law Judge. This matter was heard at Baltimore, Maryland, on September 17, 1982 (all dates herein are in 1982, unless otherwise noted), on a complaint issued on June 16, as amended, based on a charge filed by the above-named Charging Party on April 30. The complaint alleges that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), by failing and refusing to furnish the Union with certain information requested by the Union on or about March 25, which information is alleged to be necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of Respondent's employees in an appropriate unit. The answer denies the unfair labor practices alleged, but admits allegations of the complaint sufficient to justify the assertion of jurisdiction under the Board's current standards (Respondent, with an office and place of business at Cumberland, Maryland, while engaged in various phases of construction, including the fabrication and installation of sheet metal work, in a recent annual period provided services valued in excess of $50,000 directly to points located outside the State of Maryland), and to support a finding that the above-named Charging Party is a labor organization within the meaning of the Act.

Upon the entire record in this case,[1] from observation of the witnesses, and after due consideration of the brief filed by the Respondent and argument made at the hearing, I make the following

FINDINGS AND CONCLUSIONS

I. THE FACTS

A. *Introduction*

The business involved in this proceeding was begun by Walter Yoder in 1945. Respondent was incorporated in 1957. Walter Yoder and Respondent have recognized the Union, or its predecessor locals[2] since 1954 as the collective-bargaining representative of the sheet metal workers employed by Walter Yoder and Respondent.[3]

B. *The Requests for Information*

In mid-1981, Richard Drake, then business agent of Local 102 and now president and business agent of Local 100, received information from an agent of the Union in Cumberland, where Respondent is located, that Respondent was "operating another company," that "it was the same as [Respondent], and that Respondent's employees, union members, had been used to operate equipment at the second company, Potomac Metal and Supply Inc. (herein Potomac), which was not complying with the Union contract then in effect. Drake thereupon secured from the Maryland State Department of Assessments and Taxation reports filed by Respondent and Potomac which revealed that Respondent was incorporated October 1, 1957; engaged in the business of plumbing and heating; located on Rt. 6, McMullen Highway, Alleghany County; with Walter N. Yoder as president and John W. Yoder as secretary and treasurer, and with Walter N. Yoder, John W. Yoder, and Harold Hammond as directors; and that Potomac was incorporated April 1, 1970; engaged in the business of plumbing-sheet metal;[4] located at Oldtown Road Mexico Farms in Alleghany County; with the same officers and directors as Respondent.

On March 25, Drake wrote Respondent, in pertinent part, as follows:

> In order to enable Sheet Metal Workers' Local 102 to fully apply and enforce the terms of its collective bargaining agreement with Walter A. [sic] Yoder and Sons, Inc., and to serve in its capacity as bargaining agent of the sheet metal workers employed

[1] The motions of the General Counsel and of Respondent to correct the transcript are granted.

[2] It appears that originally the bargaining agreement between the parties was administered by Local 447, which is no longer in existence. It was succeeded by Local 102 which on or about April 1 became merged into Local 100 which is recognized as the successor to Local 102. These Locals will be referred to herein without distinction as "the Union."

[3] The only bargaining agreement put in evidence to which the Union and Respondent are parties by its terms runs from May 1, 1982, through April 30, 1984. This agreement, which was negotiated for Respondent by a multiemployer association (Western Maryland Mechanical Contractors Assn.) "covers the rates of pay, and conditions of employment of all employees of the [Respondent] engaged in . . . the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous of nonferrous metal work and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling euipment [sic] and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metals Workers' International Association." I find that his constitutes an appropriate unit for the purposes of collective bargaining within the meaning of the Act. On the record as a whole, and in the absence of any indication to the contrary, I infer and find that the above is the description of the unit for which Respondent recognized and contracted with the Union and its predecessor at all times material to this proceeding in 1981 and 1982.

[4] Drake testified, without contradiction, that in the industry these two descriptions are considered to be "relatively" the same business.

by your firm, we are requesting that you provide the following information concerning a possible connection between Walter A. [sic] Yoder and Sons, Inc. [Yoder] and a firm known as Potomac Metal and Supply, Inc. [Potomac]. We assure you that this information is sought solely to enable us to apply and enforce the terms of our collective bargaining agreement with you . . . . We seek only to ensure that all employees represented by Local 102 have their terms and conditions of employment governed by our current collective bragaining agreement.

Please provide the following information.

1. State whether any officer or director of Yoder occupies any position as officer, director or employee of the Potomac company.
2. State whether any shareholders of stock in Yoder serve as shareholders of Potomac or hold or occupy any position as officer or employee of Potomac.
3. State whether any officer or director of Yoder owns stock in Potomac and, if so, what percentage of stock is so owned by that individual.
4. State whether any supervisor employed by Yoder has served or currently serves as supervisor of employees of Potomac.
5. State whether Potomac has subcontracted any work from Yoder within the trade and territorial jurisdiction of Local 102.
6. State whether any contracts between Yoder and any other contractor have been assigned to the Potomac. Also state whether any contracts between the Potomac and any other contractor have been assigned to Yoder.
7. State whether any employee of Yoder has been employed by the Potomac and state the terms of such employment.
8. State whether any equipment, material, supplies or vehicles have been exchanged by and between Yoder and Potomac. State the rate for compensation for any such exchange of material, equipment, etc.
9. What customers of Potomac are now or were formerly customers of Yoder?
10. State the difference, if any, in the type of business engaged in by Potomac and Yoder.
11. What services, including clerical, administrative, bookkeeping, engineering, estimating, or other services are performed for Potomac by or at Yoder?
12. What insurance or other benefits are shared in common by employees of Yoder and the employees of Potomac?
13. What skills do the employees of Potomac possess that employees of Yoder possess?
14. Please list all former employees of Yoder that are now employed by Potomac and their titles.

Again, we assure that this information is sought solely to enable Local 102 to apply the terms of its current collective bargaining agreement with Yoder and for no other reason.

By letter dated April 5, Respondent replied to Drake's requests for information, insisting that Respondent had complied with and continued to observe the terms of the bargaining agreement, that all employees represented by the Local "have their terms and conditions of employment governed by our current collective bargaining agreement," and suggesting that Drake talk to union members at Respondent, who Respondent was "sure will inform you that there has been no violations of the Collective Bargaining Agreement." Respondent advised that in response to Item 5 of the letter, Potomac "has not subcontracted any work from [Respondent] within the trade and territorial jurisdiction of Local 102," and with regard to Item 6, no contracts between Yoder and any other contractor have been assigned to [Potomac] within your trade and territorial jurisdiction." Respondent declined to provide any further information requested inasmuch as, Respondent stated, "we are not aware of any violation of, or possible grievance under, our collective-bargaining agreement," and because the Union's letter allegedly "has not identified any need for, or relevancy of, the requested information." "Accordingly," Respondent asserted, "we do not believe that the information sought is necessary or appropriate to your performance of a role as collective-bargaining agent, and disagree with your conclusion that you are entitled to all of this information under the National Labor Relations Act."

Even prior to this exchange of letters, on March 22, Drake, at the inception of bargaining with Western Maryland Mechanical Contractors Association for a bargaining agreement to succeed the agreement expiring April 30, asserted that Local 102 was claiming that Potomac was an alter ego of Respondent and as such would be bound by any agreement reached.

On April 19, Drake met with Walter N. Yoder, president of Respondent, other members of management, and with the shop steward for Local 102, at Respondent's premises. Yoder sought to persuade Drake to drop his claim that the Union's agreement with Respondent covered the operations of Potomac, arguing that the two were in different businesses, and that Potomac handled a gauge of metal that was outside the Union's jurisdiction. Yoder asserted that Respondent was engaged in principally, if not entirely, in field construction, while Potomac, while had originally engaged in field construction, no longer did so, but was engaged in manufacture of metal forms and similar shop work. Drake disputed Yoder's claim that the work done by Potomac lay outside the Union's jurisdiction. At this meeting, there was considerable discussion of Respondent's action in sending its employees represented by the Union to Potomac's premises to work on some sheet metal belonging to Respondent. Yoder contended that Respondent, though it had similar equipment, did not have the heavier equipment required to bend the material involved. Potomac has such equipment, but Yoder explained that the sheet metal to be bent was extremely expensive, and he did not trust the skill of Potomac employees to do the job. For this reason Respondent's employees were sent to do the

work. Yoder explained that if it were not for Potomac, Respondent would have had to send the material be be bent to some other shop, perhaps a considerable distance away. It appears that after this incident, the union agent in Cumberland had ruled that Respondent's employees could not work at Potomac's shop. Yoder argued that this worked to the disadvantage of union members employed by Respondent. Drake agreed to rescind the rule.

So far as the record shows, the Union has received no further response from Respondent to its request for information.

Analysis and Conclusions

It is well settled that under Section 8(a)(5) of the Act a union which has the responsibility of representing employees for the purposes of collective bargaining is entitled to request and obtain information from the employer if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities in representing such employees. In particular, where the employer, party to a collective-bargaining agreement, appears to be conducting a nonunion "double breasted" operation,[5] the union party to that agreement is entitled to information from the employer as to the nature of and relationship between the two operations which may reasonably be relevant and useful to the union representing the employees in negotiating terms and conditions of employment with the employer, or administering and enforcing the collective-bargaining agreement. See, e.g., *Associated General Contractors of California*, supra, *Leonard B. Hebert, Jr. & Co.*, 259 NLRB 881 (1981); *Doubarn Sheet Metal, Inc.*, 243 NLRB 821 (1979).

In the present case, the president of the Union, based on reports from an agent of the Union on the scene,[6] and from reports filed with the Maryland Department of Assessments and Taxation by the Respondent and a second employer indicating that Respondent was conducting a "double-breasted" operation, which was not in compliance with the bargaining agreement between Respondent and the Union, requested that Respondent answer 14 questions concerning Respondent's relationship with the second employer. Respondent answered two of the questions (items 5 and 6), but declined to answer any of the others, though it may have later, orally, answered another (Item 10).

Though Respondent admits that the questions asked of Respondent here are "obviously similar to the questions asked in *Doubarn* and *Hebert*," it is nevertheless claimed that it has not been shown that the information sought is relevant to a "bona fide" interest of the Union. In particular, Respondent asserts that since the Union insists that it was seeking information from Respondent here "solely" for the purpose of enforcing its agreement then in effect between the Union and Respondent, and since that specific contract was not put into evidence, "there is no basis for concluding that the Union had a *bona fide* concern about a contract violation," arguing that without that contract, "there is no possible record basis for concluding that the Union *could have* believed that contract *could have* been violated.

However, Respondent misapprehends the state of the record here. There is no question but, at the times material, Respondent and the Union were parties to a bargaining agreement covering the terms and conditions of sheet metal workers. The Union had information justifying a good-faith conclusion that Respondent might be conducting a double-breasted operation. And there is no dispute that the second company (Potomac) was not applying the terms and conditions of the bargaining agreement to its sheet metal workers.[7] If Respondent and Potomac were found to be a single employer (or alter egos), Respondent might well be required to apply the terms of the bargaining agreement to the sheet metal workers employed by Potomac. See *AGC of Calif.*, supra fn. 5.

On the basis of the above and the record as a whole, I find that there is a substantial probability that the information which the Union requested from Respondent will be relevant and of use to the Union in fulfilling its statutory responsibility in representing the employees in the appropriate unit, and in administering and enforcing its collective-bargaining contract with Respondent, and that, therefore, Respondent violated Section 8(a)(5) and (1) of the Act by refusing and failing to provide to the Union the information requested.

Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The bargaining unit set forth in footnote 3 hereinabove is a unit appropriate for collective bargaining within the meaning of Section 9(a) of the Act.

4. At all times material to this proceeding the Union was and continues to be the exclusive representative of the employees in the aforesaid appropriate unit for the

[5] As stated by the Board in *Associated General Contractors of California*, 242 NLRB 891 fn. 5 (1979), "The term 'double-breasted' is used to describe contractors who operate two companies, one unionized and the other nonunionized or open-shop. Depending on the underlying facts and circumstances of each case, the employees of both constituent companies may be held to constitute a single appropriate bargaining unit or the employees of each may be held to form separate units. In the former case, the collective-bargaining agreement covering the employees of the unionized firm may be held to cover the employees of the nonunion firm as well; or the employer may be ordered to bargain on behalf of both firms with the union which had represented the unionized portion of such a double-breasted operation."

[6] Respondent argues that since these reports were "hearsay," they are "probative of nothing." This misses the point. Testimony concerning these reports was received not for the truth of their content, but to demonstrate the basis on which the Union acted in this matter.

[7] At the hearing, though apparently not referred to in the brief, John W. Yoder, an officer of Respondent and Potomac, seemed to indicate that the employees of the two companies performed different functions, Respondent being engaged in construction primarily, and Potomac in manufacture or fabrication of sheet metal products. However, whether Respondent's bargaining agreement covered functions performed by Potomac's employees is not an issue to be decided here. We are concerned only with whether the Union is entitled to information which will enable to it decide if it should seek a remedy for the failure to apply the agreement to the Potomac employees. See *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967).

purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. Respondent, by failing and refusing to give the Union information requested in the Union's letter to the Respondent dated March 25, 1982, with reference to Respondent's relationships and dealings with Potomas Metal and Supply, Inc. violated Section 8(a)(5) and (1) of the Act.

THE REMEDY

It having been found that the Respondent violated the Act by its refusal and failure to supply the Union with certain information requested in the Union's letter of March 25, 1982, which information is relevant and necessary to the Union's obligation to represent the employees in the contractual bargaining unit, it will be recommended that the Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

[Recommended Order omitted from publication.]